

Tennessee law specifically allows him to raise the defendants' fraudulent foreclosure tactics as an affirmative defense to the General Sessions Civil Detainer Warrant seeking possession of his home. The issue of possession of the Property was not addressed in his previous litigation. The Defendants base their defenses to the counter-claims by claiming the same were previously adjudicated. However, the issue of possession was never addressed and therefore Mr. Kantz should be permitted to fully assert the same. Under Tennessee law "[t]here is absolutely no doubt that wrongful foreclosure can be raised as an affirmative defense to an unlawful detainer action brought by the purchaser of property in foreclosure. *Citifinancial Mortgage Co., Inc. v. Beasley*, No. W2006-00386-COA-R3-CV, 2007 WL 77289 at *5 (Tenn. Ct. App. Jan. 11, 2007); *Federal Nat'l Mortgage Ass'n v. Robilio*, No. W2007-01758-COA-R3-CV, 2008 WL 2502114 at *5 (Tenn. Ct. App. June 24, 2008). "Where title bears directly upon the right of possession . . . a party may legitimately interpose the issue." *Beasley*, 2007 WL 77289 at *6. It is the purchaser's "constructive entry" onto the premises through the title obtained in foreclosure that "provides the basis for maintaining the unlawful detainer action." *Id.* at *7. *Davis v. Williams*, E2010-01139-COA-R3-CV (Tenn. Ct. App. Jan. 31, 2011).

The issue of *possession* of Mr. Kantz's Property was not raised in the previous litigation and therefore can and should be freely raised in this matter.

The intervention of FYI and the plethora of pleadings between the Defendants and FYI have uncovered the Defendant's numerous fraudulent tactics and legal malfeasance related to the handling of the faked foreclosure sales. Mr. Kantz seeks leave to amend his counter-complaint to conform to the newly discovered evidence and the Defendants' admissions.

No party has filed an Answer the original counter-complaint so no party would be prejudiced from the amendment.

Respectfully submitted:

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Certificate of Service

I certify a copy of this Amended Answer and Counter-Claim has been served on the following via the Court's ECF to:

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